



Civil Miscellaneous Appeal Nos.791 & 792 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.791 & 792 of 2024

Minor Naveen
S/o.Subramani ... Appellant in C.M.A.No.791 of 2024

Minor Vignesh
S/o.Boominathan ... Appellant in C.M.A.No.792 of 2024

Vs.

1.Sampath
S/o.Kutty

2.The Divisional Manager,
The New India Assurance Company
Limited, Hub 3rd Party Claims,
CSI Building, 2nd Floor,
No.1, Officer's Lane,
Near Voorhees College,
Vellore - 1. ... Respondents in both appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.02.2023 made in M.C.O.P.Nos.246 and 247 of 2020 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.



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For Appellants : Ms.A.Subadra
[in both appeals]

For Respondents : Mr.K.Elango [R2]
[in both appeals]

COMMON JUDGMENT

The issue involved in both the appeals are common and hence, they are taken up together, heard and disposed of through this common judgment.

2. The appellants, who are the claimants, were aged about 16 years at the time of accident. The appellant in C.M.A.No.792 of 2024 was riding the two wheeler and the appellant in C.M.A.No.791 of 2024 was the pillion rider and apart from him there was yet another pillion rider, who was travelling in the two wheeler at the relevant point of time. When the two wheeler was nearing Tharadapattu Village at Sathanur to Thandarambattu road, the two wheeler, belonging to the first respondent, was ridden in a rash and negligent manner and dashed against the two wheeler that was ridden by the appellant in C.M.A..No.792 of 2024. As a result, the appellants herein sustained injuries, which resulted in filing the claim petitions before the Tribunal in M.C.O.P.Nos.246 and 247 of 2020. Yet another pillion rider succumbed to the injuries.



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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the two wheeler belonging to the first respondent was ridden in a rash and negligent manner as a result of which the accident had taken place. The Tribunal also took into consideration the injuries sustained by the appellants and fixed the compensation under various heads. Insofar the appellant in C.M.A.No.791 of 2024 is concerned, the Tribunal fixed total compensation at Rs.1,82,500/-. Insofar as the appellant in C.M.A.No.792 of 2024 is concerned, the Tribunal fixed total compensation at Rs.1,72,500/-. The break-up of compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		M.C.O.P.No 246/2020	M.C.O.P.No 247/2020
1.	Disability (10%)	50,000/-	50,000/-
2.	Pain and Sufferings	35,000/-	30,000/-
3.	Extra Nourishment	10,000/-	10,000/-
4.	Attender Charges	10,000/-	5,000/-
5.	Loss of Amenities	50,000/-	50,000/-
6.	Loss of income during treatment period	22,500/-	22,500/-
7.	Transportation Expenses	5,000/-	5,000/-
	Total	1,82,500/-	1,72,500/-



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4. After having fixed the compensation payable, the Tribunal came to a conclusion that 15% contributory negligence must be attributed against both the appellants since three persons had travelled in a two wheeler and the rider of the two wheeler was not having a valid driving license to drive the two wheeler at the time of accident.

5. The appellants, aggrieved by the compensation fixed by the Tribunal, have filed the present appeals seeking for enhancement of compensation.

6. Heard Ms.A.Subadra, learned counsel for appellants/claimants and Mr.K.Elango, learned counsel appearing for second respondent insurance company.

7. The main ground that was urged by learned counsel for appellants is that the Tribunal, after having come to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the two wheeler owned by the first respondent, ought not to have fixed contributory negligence on the appellants. It was also



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contended that both the appellants had suffered 10% disability as assessed by the Medical Board. However, the Tribunal has fixed Rs.5,000/- per percentage of disability and awarded Rs.50,000/- as compensation towards disability. This fixation of compensation towards disability was questioned by learned counsel for appellants by relying upon the judgment of the Apex Court in ***Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited and another [CDJ 2013 SC 740]***. The relevant portion in the aforesaid judgment that was relied upon by learned counsel is extracted hereunder:

"Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick."

8. Learned counsel for appellants also submitted that the appellant in C.M.A.No.791 of 2024 had underwent treatment as an inpatient for nearly 24 days and the appellant in C.M.A.No.792 of 2024 had underwent treatment as inpatient for nearly 6 days, whereas, the Tribunal



has fixed the attender charges at Rs.10,000/- and Rs.5,000/- respectively and the said compensation also requires enhancement.

9. *Per contra*, learned counsel for second respondent insurance company submitted that the compensation that was fixed by the Tribunal is perfectly in order. Learned counsel contended that the two wheeler was ridden by a minor aged about 16 years without a valid license and that apart, three persons were travelling in a two wheeler, which is also a major violation. Therefore, learned counsel, relying upon the judgment of this Court, submitted that there is contributory negligence on the part of the appellants and the Tribunal has rightly deducted 15% towards contributory negligence. Learned counsel concluded his argument by submitting that there are no merits in these appeals and the same are liable to be dismissed.

10. This Court carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.



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11. In the instant case, there is no dispute with regard to the fact that the Tribunal has fixed the negligence squarely on the rider of the two wheeler owned by the first respondent. The same is evident from the finding that has been rendered by the Tribunal for issue No.1, which touches upon the negligence. Having found that the rider of the two wheeler belonging to the first respondent has ridden the two wheeler in a rash and negligent manner, which resulted in the accident, the Tribunal went on to fix contributory negligence on both the appellants at 15%. This is in view of the fact that three persons were travelling in the two wheeler and the two wheeler was ridden by a 16 year old boy, who did not have a driving license.

12. The above reasons that have been assigned by the Tribunal for fixing contributory negligence may not be sustainable. Riding the two wheeler without a license or carrying more persons as pillion rider in a motor cycle though is not permitted in law, it will only tantamount to violation of the relevant provisions of the Motor Vehicles Act, which results in imposition of punishment/penalty. However, this violation, by itself, cannot lead to giving a finding on contributory negligence unless it



is established that this very act of riding without a license or carrying more than one person as a pillion rider had contributed either to the accident or to the impact of the accident upon the victim.

13. Useful references can be made to the judgments of the Apex Court in ***Dinesh Kumar J. @ Dinesh J. v. National Insurance Company Ltd. and others [2018 (1) SCC 750]*** and ***Mohammed Siddique and another v. National Insurance Company Ltd. & others [2020 (1) TNMAC 161]***.

14. In the light of the above discussion, this Court finds that the Tribunal went wrong in ascribing 15% contributory negligence both on the rider as well as the pillion rider of the two wheeler.

15. The next issue that has to be gone into by this Court is with regard to fixation of compensation under the head 'disability'. Both the appellants faced 10% disability, which was fixed by the Medical Board. In the judgment that was relied upon by the learned counsel for appellants, the Apex Court had held that the assessment of compensation



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under the head of 'disability' for children suffering disability must be done by adopting a different yardstick. The Apex Court had fixed the yardstick. Insofar as permanent disability at 10%, it should be fixed at Re.1 lakh unless there are exceptional circumstances to take a different yardstick. This judgment will squarely apply to the facts of the present case. The Tribunal ought not to have fixed the compensation under the head 'disability' by calculating per percentage and should have applied the yardstick provided by the Apex Court.

16. In the light of the above discussion, this Court is inclined to fix the compensation under the head 'disability' at Re.1 lakh in both the cases.

17. Insofar as the claim made for enhancement of compensation under the head 'attender charges', this Court is not inclined to make any enhancement since the Tribunal has fixed compensation under the head 'loss of income' during the treatment period for both the appellants which is on the higher side and the same can be adjusted towards attender charges.



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18. The upshot of the above discussion is that the compensation that was fixed for both the appellants under the head 'disability' is enhanced to Re.1 lakh. That apart, the 15% contributory negligence that was deducted from the total compensation is also set aside. The award passed by the Tribunal in all other aspects is sustained.

19. Accordingly, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		M.C.O.P.No 246/2020	M.C.O.P.No 247/2020
1.	Disability (10%)	1,00,000/-	1,00,000/-
2.	Pain and Sufferings	35,000/-	30,000/-
3.	Extra Nourishment	10,000/-	10,000/-
4.	Attender Charges	10,000/-	5,000/-
5.	Loss of Amenities	50,000/-	50,000/-
6.	Loss of income during treatment period	22,500/-	22,500/-
7.	Transportation Expenses	5,000/-	5,000/-
	Total	2,32,500/-	2,22,500/-

20. The compensation awarded by the tribunal at Rs.1,55,125/- and Rs.1,46,625/- is enhanced to Rs.2,32,500/- and Rs.2,22,500/- respectively. The second respondent insurance company is directed to



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deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeals are disposed of in the above terms. No costs.

02.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Special Sub Judge (MCOP),
Tiruvannamalai.



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N.ANAND VENKATESH, J.

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